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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/356,940
Filing Date: July 19, 1999
Appellant(s): GRAJEWSKI ET AL.

MAILED

OCT 05 2005

Technology Center 2600

George R. McGuire
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 11, 2005 appealing from the Office action mailed January 6, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

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(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Claims 33-52 stand rejection under 35 U.S.C. 112 (not claims "33-54" as stated in the Brief at page 3 of 21, under "ISSUES"). Claims 53 and 54 are NOT rejection under 112.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

(A) 35 U.S.C. 112 Rejection

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 33-52 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

It is noted that the subject matter in question as described below was not recited in the original claims. Independent claim 33 will be used to exemplify the non-supported subject matter. Given that independent claim 45 recites equivalent non-supported subject matter, it too is rejected on the same grounds. Claims 34-44 and 46-52 are rejected as depending from these claims.

Independent claim 33, at steps g and h, recites (in part, with emphasis added):

... permitting said individual to store in said data storage source *a plurality of indicia* each one of which is representative of a secured site; and password circuitry for generating a plurality of passwords, wherein each of said *plurality of passwords is uniquely associated with a respective one of said plurality of indicia in sequence.*"

The scope of these claim elements cover the storage of a plurality of indicia before the generation of any passwords. Then, after the plural indicia are stored, the passwords are generated. Following the generation of the passwords, they are then associated with the indicia all at once, and "in sequence". However, the specification and original disclosure describes a process of storing a single indicia, generating a single password, and then associating that single password with that indicia. While, according to the original disclosure, the process can be repeated for additional indicia one at a time (i.e., in series; refer to specification page 7, top

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paragraph), the original disclosure does not support associating plural passwords with plural indicia all at once (i.e., in parallel). Independent claim 45 recites equivalent limitations at steps c and d.

Note that independent claim 53 is not rejected because step d requires the steps of “repeating steps b and c in sequence”, where step b corresponds to entering the indicia, and step c corresponds to associating a random password with the indicia. This is supported by the original disclosure.

In summary, the invention as currently defined by independent claims 33 and 45 covers the generation of a plurality of indicia first, and then the association of a plurality of passwords to those indicia all at once whereas the original disclosure at best describes the association of a single password with a single indicia, where the process may be repeated for other indicia and passwords.

(B) 35 U.S.C. 103 Rejections

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 45-48 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of McIntosh (GB 2,274,184 A) and He (US 5,944,824 A).

McIntosh:

Regarding claims 45 and equivalent claim 53, McIntosh discloses a device comprising:

- a portable body member (figure 1, numeral 5; “pocket-sized electronic security device” at page 1, line 5; “same size and shape as a standard bank or credit card” at page 2, line 35);
- a data storage contained in the body member (figure 2, numeral 40; “memory means 40” at page 2, line 38; “non-volatile Random Access Memory (RAM) or bubble memory” at page 3, line 10);
- a user interface and communication components (figure 1, numerals 10, 20 and 25 are a keyboard, input key and clear key respectively and these are a user interface, and numeral 15 is an LCD display for communications with a user) permitting an individual to store plural indicia representative of a secure site in the storage (“letters” at page 2, line 44; e.g., “BC” at page 3, line 39; “... the LCD will then request the designation of the Account, which will comprise the remaining two letters in the sequence ...” at page 3, line 35); and
- password circuitry allowing entry of a plurality of passwords (“... the required number, say 1234, is then entered – also by use of the keys, the function of the keys having automatically changed so that only numbers can be displayed and recorded” at page 3, lines 42-44), wherein each password is uniquely associated with a respective one of the indicia (“sequence of numbers” at page 2, line 45; e.g., “1234” at page 3, line 42; in the example given by McIntosh at page 3, lines 25-44, the indicia “BC” is uniquely associated with the password “1234”; the input

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keys, along with their control circuitry and the memory 40, is circuitry that allows for the generation of passwords by a user; McIntosh anticipates the generation of random passwords, as the user may enter any password desired.

McIntosh discloses a random number generator (figure 2, numeral 55; "... unit 55 capable of generating a random sequence of numbers when required" at page 3, line 14).

Regarding claim 53 specifically, the steps of associating a password with an indicia can be repeated by a user as many times as desired as permitted by the memory capacity of the memory device ("... entered and recorded in like manner if so desired" at page 4, line 1).

Regarding claim 46, indicia selection circuitry is disclosed (figure 4, "punch in account designation").

Regarding claim 47, recall circuitry is disclosed (figure 4, "pin number").

Regarding claim 48, a display is disclosed (figure 1, numeral 15).

Differences:

While McIntosh uniquely associates a user-entered password with a respective one of the indicia, and while McIntosh teaches a random number generator for purposes other than generating actual passwords (i.e., "unit 55 capable of generating a random sequence of numbers when required" at page 3, line 14), McIntosh does not disclose "password circuitry comprising a random number generator for randomly generating a plurality of passwords".

That is, while McIntosh teaches associating an indicia with a password ("sequence of letters corresponding to a sequence, or respective sequence, of numbers" at page 2, line 39), and

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while McIntosh teaches a "... unit 55 capable of generating a random sequence of numbers when required" at page 3, line 14, McIntosh does not link the generation of the password itself (i.e., the "sequence of numbers") with the random number generator.

He:

He discloses a password protected secure system, where a user identifier is associated with a password ("user identifier and a password" at column 5, line 8), comprising a random number generator (figure 7, numeral 148) for randomly generating a password for a use to gain access to the system ("the selection of a password may be randomly determined" at column 7, line 58; "random selection of the password" at column 7, line 67).

Obviousness Statement:

It would have been obvious at the time the invention was made to one of ordinary skill in the art to add a random password generating circuit, or to modify the password circuitry already disclosed by McIntosh according to the teaching of He, to generate a random passwords/PIN for the user for purposes of gaining access to his/her secure accounts so that when it comes time for the user to either choose a password, or to change a password, the password can be randomly generated. The above combination would serve to "increase the security level due to the unpredictability of the password" (He, column 8, line 1) and "for convenience and for uniqueness" (He, column 13, line 6), thus ensuring a completely random password not influenced by the knowledge of the user and thus making it more difficult for a hacker to predict or figure out the user's password, and for convenience.

Claims 45-48 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of McIntosh (GB 2,274,184 A) and Noll et al. (US 5,732,138 A).

McIntosh:

The description of McIntosh as well as the differences between McIntosh and the claimed invention as described above in the McIntosh and He rejection is incorporated herein by reference.

Noll et al.:

Noll teaches that “random numbers can be used to generate ... passwords for ... computer security systems” (column 1, line 23), and “in order to ensure the utmost security, it is essential that the security system implements a method for generating a random number that appears completely random” that “presents no opening or prior knowledge that can be exploited by an hostile agent” (column 1, lines 47-51). To that end, Noll teaches a “secure pseudo-random number generator” (column 3, line 65) that “can be used in any security application that uses random numbers to generate ... passwords” (column 3, line 67) that can function “independently as a method of generating random numbers without being part of a cryptographic application” (column 4, line 4).

The Noll reference would suggest to one skilled in the art that random number passwords are desirable if not necessary to ensure security, and Noll teaches a means for generating such passwords.

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Obviousness Statement:

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify the password circuitry of McIntosh according to the teaching of Noll, by including a random number generator to generate random passwords/PINs for the user for purposes of gaining access to his/her secure accounts so that when it comes time for the user to either choose a password, or to change a password, the password can be randomly generated. The addition of a random password generator as taught by Noll would serve to provide a “completely random password” which “presents no opening or prior knowledge that can be exploited by an hostile agent” (Noll, column 1, line 50).

Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of McIntosh (GB 2,274,184 A) and He (US 5,944,824 A) as applied to claim 47 above, and further in view of Bang (US 6,088,143 A). ***The rejection as advanced in the Office Action mailed on July 9, 2003 is incorporated herein by reference. Because the claims stand or fall with claim 45, repetition of the specific grounds of rejection herein is unnecessary.***

Claims 50-52 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of McIntosh (GB 2,274,184 A) and He (US 5,944,824 A) as applied to claim 45 above, and further in view of Guthrie et al. (US 6,161,185 A). ***The rejection as advanced in the Office Action mailed on July 9, 2003 is incorporated herein by reference. Because the claims stand or fall with claim 45, repetition of the specific grounds of rejection herein is unnecessary.***

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Claims 33-36, 38, 39, 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of McIntosh (GB 2,274,184 A) and He (US 5,944,824 A) as applied to claim 45-48 and 53 above, and further in view of Ramachandran (US 6,315,195 B1). ***The rejection as advanced in the Office Action mailed on July 9, 2003 is incorporated herein by reference. Because the claims stand or fall with claim 45, repetition of the specific grounds of rejection herein is unnecessary.***

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of McIntosh (GB 2,274,184 A), He (US 5,944,824 A) and Ramachandran (US 6,315,195 B1) as applied to claim 35 above, and further in view of Bang (US 6,088,143 A). ***The rejection as advanced in the Office Action mailed on July 9, 2003 is incorporated herein by reference. Because the claims stand or fall with claim 45, repetition of the specific grounds of rejection herein is unnecessary.***

Claims 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of McIntosh (GB 2,274,184 A), He (US 5,944,824 A) and Ramachandran (US 6,315,195 B1) as applied to claim 33 above, and further in view of Guthrie et al. (US 6,161,185 A). ***The rejection as advanced in the previous Office Action is incorporated herein by reference. Because the applicant in the response did not address this rejection, it will not be repeated herein.***

(10) Response to Arguments

(A) Remarks related to the McIntosh and He combination:

Appellant's Remark: "McIntosh fails to show a device which generates a random password for an individual to use to access a protected site. The "fake" password generated in McIntosh does not allow the unauthorized user to access any of the password-protected sites" at Brief page 5 of 21, bottom paragraph.

Examiner's Response: Agreed. McIntosh discloses the storage of indicia (e.g., "identifying letters BC" at page 3, line 39) in association with a user-entered password (e.g., "1234" at page 3, line 42). McIntosh also discloses a random number generator (i.e., "unit 55 capable of generating a random sequence" at page 3, line 13). McIntosh describes the user as entering the password (i.e., "1234, is then entered" at page 3, line 42). While there is nothing in McIntosh precluding the user from entering his own "random" password, McIntosh does not describe his random number generator (i.e., "unit 55" at page 3, line 13) as generating the random password for storage in association with the indicia. This is what the secondary references (i.e., He and Noll) teach as described in the 35 U.S.C. 103 rejections above.

Appellant's Remark: "He is thus directed toward protecting inter-network security from electronic eavesdropping, and does not address security of the user-to-network connection. He, col. 7, 11. 42-47. By contrast, McIntosh is directed to solely to improving the security of the

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user-to-network connection by protecting the accessibility of passwords stored in a user's personal device. More importantly, He does not teach allowing users to choose their own passwords, and definitely does not discuss how a user should handle personal password storage and retrieval” at Brief page 6 of 21, bottom of page.

Examiner’s Response: The He reference is a relied upon as a “teaching” reference in the McIntosh and He combination. It is McIntosh that discloses “allowing users to choose their own passwords”, not He. That is, McIntosh already teaches the element of a user choosing his own passwords. As stated immediately above, while McIntosh teaches associating indicia with passwords, and while McIntosh discloses a random number generator, McIntosh does not describe his random number generator (i.e., “unit 55” at page 3, line 13) as generating the random password for storage in association with the indicia. The individual elements of the claimed invention are all taught by McIntosh, but the interconnection between the random number generator and the user entered passwords is lacking. He is relied upon as teaching this aspect. That is, He teaches the use of a random number as a password (“the selection of a password may be randomly determined” at column 7, line 58; “random selection of the password” at column 7, line 67) with motivation for doing so (“increase the security level due to the unpredictability of the password” (He, column 8, line 1; “for convenience and for uniqueness” (He, column 13, line 6). The “network” aspects of the He system are not relied upon by the examiner, and do not preclude the He reference as a secondary “teaching” – that is, teaching the concept and benefits of a random password. The combination of McIntosh and He

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is not a “literal” combination. Rather, He is relied upon as a “teaching” (albeit a teaching of an extremely well known, almost ubiquitous concept of a “random” password).

Appellant’s Remarks: “The Examiner proposes a structural modification to the user device in McIntosh to generate passwords, rather than merely to store server generated passwords – the only function contemplated by McIntosh” at Brief page 7 of 21, top paragraph.

Examiner’s Response: The McIntosh system can store a password comprising any number sequence desired by the user, whether it is server generated or user generated, so long as the user enters the password into the system. The He reference discloses the concept of a machine generated random password, with motivation (“increase the security level due to the unpredictability of the password” at He, column 8, line 1; “for convenience and for uniqueness” at He, column 13, line 6). From an engineering standpoint, almost every proper 103 rejection ever written requires some type of “structural” modification to the primary teaching. However, so long as the individual claimed elements are taught by the combination, and so long as there is proper motivation for making the combination, the ensuing “structural” modification is within the skill set of those of ordinary skill in the art. However, from a legal standpoint, a secondary teaching is just that – a “teaching”. A “combination” in a 35 U.S.C. 103 sense is a combination of a primary reference with a second “teaching”. In the case of the McIntosh and He combination, the “structural” modification required to McIntosh is the use of either the existing random number generator of McIntosh, or the addition of a new random number generator (i.e., the one disclosed by He) to allow a random sequence to be generated for use as

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the user's password (i.e., "1234, is then entered" at McIntosh page 3, line 42). All of the elements are disclosed by the combination, and the structural modification would have been obvious (particularly in view of the motivation in He) and well within the skill set of one of ordinary skill in the art. However, rather than the "structural modification" associated with one attempting to reduce the McIntosh and He combination to practice, what's more compelling here is the combination of what McIntosh discloses with the "teaching" of He. Again, the elements of the claimed invention are all taught by McIntosh, but the interconnection between the random number generator and the user entered passwords is lacking. He is relied upon as teaching this aspect. That is, He teaches the use of a computer generated random number as a password ("the selection of a password may be randomly determined" at column 7, line 58; "random selection of the password" at column 7, line 67) with motivation for doing so ("increase the security level due to the unpredictability of the password" (He, column 8, line 1; "for convenience and for uniqueness" (He, column 13, line 6). The combination of McIntosh and He is not a "literal" combination. Rather, He is relied upon as a "teaching" (albeit a teaching of an extremely well known, almost ubiquitous concept of a "random" password).

Appellant's Remarks: At page 8-9 of 21 of the Brief, the appellant advances a fictitious structural and literal combination of McIntosh and He in a manner that was not proposed by the examiner.

Examiner's Response: In the 35 U.S.C. 103 rejection advanced in the Final Office Action of January 6, 2004 and advanced herein above, the examiner states:

“It would have been obvious at the time the invention was made to one of ordinary skill in the art to add a random password generating circuit, or to modify the password circuitry already disclosed by McIntosh according to the teaching of He, to generate a random passwords/PIN for the user for purposes of gaining access to his/her secure accounts ... “

The modification made by the examiner is to, for example, adapt the random number generator already in the McIntosh device (i.e., figure 2, numeral 55) to generate a random number for the user to utilize as his required password. There is no specific requirement in McIntosh that another, remote machine generate the user's password as described by the appellant's fictitious combination. The user of McIntosh is free to enter his own password taken from any source, or a password of his own choosing; even one decided upon at the moment of entry into the McIntosh device. McIntosh states that the purpose of his system is to aid a user in remembering PIN numbers (i.e., passwords) associated with any type of system (“... multiplicity of PIN and other numbers which they are required to remember” at McIntosh page 5, line 3). Some such systems, such as computer software, websites, etc., require an initial password upon creating an account, and some system require periodic changing of passwords. Certainly, the McIntosh system DOES NOT contemplate only storing passwords that have already been generated in advance which is what the appellant's fictitious bodily modification at Brief page 9 of 21 depicts. This is not at all the modification proposed by the examiner. The modification proposed by the examine is quite simple, and well founded in the references:

“It would have been obvious at the time the invention was made to one of ordinary skill in the art to add a random password generating circuit, or to modify the password circuitry already disclosed by McIntosh according to the teaching of

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He, to generate a random passwords/PIN for the user for purposes of gaining access to his/her secure accounts ... “

Appellant's Remarks: “Even if the general teaching in He that randomness is better is sufficient to motivate the specific combination of elements recited in claims 33, 45 and 53, the alterations to the device disclosed in McIntosh that are proposed by the Examiner would impermissibly change the principle operation of the device and render it unsatisfactory for its original purpose ...” at Brief page 11 of 21.

Examiner's Response: Disagreed. The operating principle of McIntosh is that of storing indicia in association with passwords, and this aspect does not change per the He modification. In fact, the He modification provides an addition to the McIntosh device, not a change. The addition would be the ability to have a password randomly generated for the user if so desired. For example, when a user opens a new account, and the account requires a password of the user's choosing, the user could have the McIntosh device (as modified) generate the password. Then, the user could store the indicia representing the account name, along with the newly generated password.

(B) Remarks related to the McIntosh and Noll combination:

Appellant's Remarks: Noll “fails to provide the necessary motivation to modify the structure of the portable device of McIntosh to include circuitry for generating random numbers for association with the indicia of secure sites, as presently claimed” at Brief page 13 of 21.

Examiner's Response:

The McIntosh system stores passwords in association with indicia indicative of an account that requires the password (e.g., "Barclays Current Account, the identifying letters BC" and "1234" at page 3, lines 39-42). McIntosh is indifferent as to the types of accounts and related passwords that can be stored therein ("multiplicity of PIN and other numbers which they are required to remember" at page 5, line 3). The only requirement of McIntosh is that the user enter the password (e.g., "say 1234, is then entered" at page 3, line 42). McIntosh does not preclude a user entering a new or existing password, and McIntosh does not preclude machine generated passwords or user generated passwords, and McIntosh does not preclude entry of randomly generated passwords or non-random passwords (e.g., a significant number to the user). Quite simply, McIntosh leaves the choice of passwords up to the user, and therein lies the major difference between McIntosh and the claimed invention.

The Noll reference, as described in the 103 rejection above, suggests to one skilled in the art that random number passwords are desirable if not necessary to ensure security (i.e., prevention from an account being hacked), and Noll teaches a means for generating such passwords. That is, Noll teaches a random number generator generating passwords for a user to gain access to a secure system.

It is the examiner's contention that given the stated purpose and use of the McIntosh reference, and given the suggestions of Noll, one skilled in the art would have found it advantageous to modify McIntosh to include a random number generation capability to generate, for a user, a random password for gaining access to his/her secure accounts so that when it comes

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time for the user to either choose a password, or to change a password, the password can be randomly generated.

With regard to motivation, the addition of a random password generator as taught by Noll would serve to provide a “completely random password” to a user of McIntosh, which “presents no opening or prior knowledge that can be exploited by an hostile agent” (Noll, column 1, line 50). This is explicit motivation directly quoted for the Noll reference, thus meeting if not exceeding the necessary legal criteria therefor.

(C) Remarks related to the 35 U.S.C. 112 rejection:

Appellant’s Remark: “First, section 112, paragraph 1 does not require an inventor to describe every possible way in which a claimed invention may be used. Such a requirement is untenable” at Brief page 14 of 21.

Examiner’s Response: Agreed. However, 35 U.S.C. 112 first paragraph does require a written description of the invention, and the claims that are either amended or added after the original filing data must comply with the original disclosed invention. In the case of the appellant’s disclosed invention, an indicia is entered and then a password is associated with the indicia, and the process may be repeated for additional indicia and password combinations. However, claims 33 and 45 as currently drafted encompass the generation of a plurality of indicia first, and the association of a plurality of passwords with the indicia all at once. This discrepancy between the now claimed invention and the originally disclosed invention is more

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than just a way “in which the claimed invention may be used”. Rather, this discrepancy is a fundamental difference between the mode of operation of the claim vs. the disclosed invention. The 35 U.S.C. 112 rejection is maintained for this reason. The addition of the limitation “in sequence” to end of claims 33 and 45 does to rectify the discrepancy. For example, given the “in sequence” limitation, the claims now cover the generation of a plurality of indicia as recited in step c of claim 45. For example:

Ebay

Amzon

Bank

ATM

Then, in step d of claim 45, passwords are associated with the plurality of indicia in a sequence. For example, a password “1234” is associated with “Ebay”, and another password is then associated with “Amazon”, the another is associated with “Bank”, etc. in “a sequence”. Still, the original disclosure at best described generating a single indicia first, than associating a password with that indicia, then generating another indicia, and associating another password with that indicia, and so on. The claims as currently recited cover a mode of operation that is not supported by the original disclosure.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

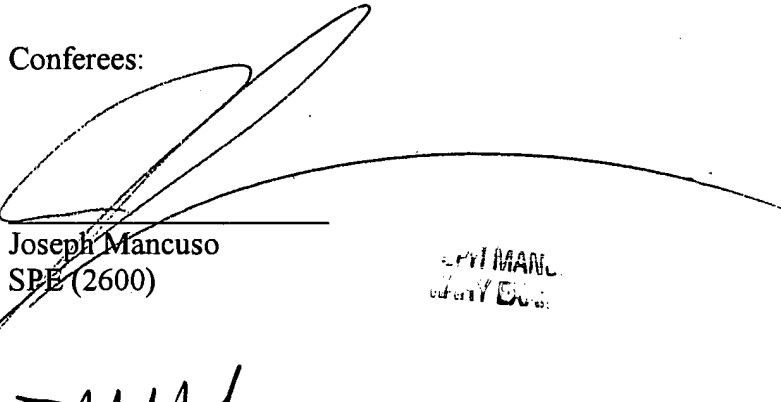
Respectfully submitted,



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